Rajoo s/o Ramasamy v Inspector General of Police & Ors

HIGH COURT (PENANG) — CRIMINAL APPLICATION NO 44-56-89
EDGAR JOSEPH JR J
7 DECEMBER 1989

Preventive Detention — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Representations to Advisory Board — Advisory Board failing to make recommendations within three months of receiving representations — Whether Yang di-Pertuan Agong had power to extend three-month period after the expiry of such period — Reasonable time for Yang di-Pertuan Agong to give directions to Minister

Constitutional Law — Preventive detention — Representations to Advisory Board — Whether Yang di-Pertuan Agong's extension of time period for making recommendations ultra vires the Constitution

The applicant had been detained under a detention order made by the Minister of Home Affairs pursuant to s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The detention order directed detention for two years with effect from 13 May 1988. On 22 May 1988, the applicant made representations to the Advisory Board under the provisions of art 151(1)(a) of the Constitution. The hearing of the representations was fixed for 20 July 1988. In the meanwhile, pursuant to an application for a writ of habeas corpus, the High Court at Kuala Lumpur had, on 14 July 1988, granted the application and released the applicant. [See [1989] 1 MLJ 356.] The Minister appealed against this decision to the Supreme Court. While the appeal was pending, the applicant was rearrested on 17 September 1988 and on 14 November 1988, he was detained under another detention order ('the second detention order') pursuant to s 6(1) of the Act, the period of detention to be for two years. The applicant filed a second application for a writ of habeas corpus.

On 30 January 1989, the Supreme Court allowed the appeal from the decision of the High Court at Kuala Lumpur, and the grant of habeas corpus was set aside. [See [1989] 1 MLJ 416.] On 24 February 1989, the Minister consequently revoked the second detention order. On 28 February 1989, pursuant to art 151(1)(b) of the Constitution, the Yang di-Pertuan Agong allowed an extension of time of ten months and nine days commencing on 23 May 1988 within which the Advisory Board had to consider the representations made by the applicant and make their recommendations to the Yang di-Pertuan Agong. The applicant's representations were heard, and on 27 March 1989, it made its representations to the Yang di-Pertuan Agong. In accordance with these recommendations, the Yang di-Pertuan Agong had, pursuant to s 10(2) of the Act, confirmed the first detention order made by the Minister. It was not clear when this was but it must have been after 27 March 1989.

In this application for habeas corpus, the applicant argues that:

(i) he has suffered continued detention without the Advisory Board having considered representations by him and made their recommendations thereon within three months of receiving such representations, thus rendering his detention ultra vires art 151(1)(b) of the Constitution;
(ii) the extension of time granted by the Yang di-Pertuan Agong, upon application made after the expiry of the three-month period, was ultra vires the powers conferred by art 151(1)(b);
(iii) the decision giving directions to the Minister authorizing the continued detention could not be said to have been made within a reasonable time as there was no communication of this decision; and
(iv) there had been no communication to the applicant of the Yang di-Pertuan Agong's decision to the applicant.

Held, dismissing the application:

(1) Sections 45 and 109 of the Interpretation Acts 1948 and 1967 (Rev 1989) allow the Yang di-Pertuan Agong to extend time for the purposes of art 151(1)(b) even though the application for extension of time is made to him after the expiry of the period fixed thereunder.

(2) Considering the circumstances of the case, there has not been a non-compliance of the requirement that a decision of the Yang di-Pertuan Agong under s 10(2) agreeing with the recommendations of the Advisory Board must be made within a reasonable time.

(3) The applicant has not suffered any prejudice as a result of the non-communication to him or his solicitors of the Yang di-Pertuan Agong's decision authorizing his continued detention.

[*Editorial Note*: The applicant has appealed to the Supreme Court vide Criminal Appeal No 05-167-89.]

Cases referred to

1 *Karpal Singh* v *Inspector General of Police* [1989] 1 MLJ 184 (refd)
2 *Re Tan Boon Liat* [1977] 2 MLJ 108 (refd)
3 *Keymer* v *Reddy* [1912] 1 KB 215 (refd)
4 *Lee Lee Cheng* v *Seow Peng Kwang* [1960] MLJ 1 (refd)
5 *Jayaraman a/l Arumugam* v *Minister of Home Affairs* [1989] 2 CLJ 605 (folld)

Legislation referred to

Courts of Judicature Act 1964 Schedule item 8
Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3(1), 6(1), 10(2)
Federal Constitution arts 151(1)(b), 169(1)
Interpretation Acts 1948 and 1967 (Rev 1989) ss 45, 109
Interpretation and General Clauses Ordinance 1948 s 39, Eleventh Schedule

Karpal Singh for the applicant.
Balia Yusof bin Wahi (Senior Federal Counsel) for the respondents.

Cur Adv Vult

Edgar Joseph Jr J: In this application for a writ of habeas corpus ad subjiciendum, the history of the matter which called for the consideration of the court may be stated briefly thus. The applicant had been detained under a detention order made by the Minister of Home Affairs, pursuant to the powers conferred upon him by s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'), directing detention for a period of two years with effect from 13 May 1988 at the Pusat Pemulihan Akhlak, Muar, Johore ('the centre'). For brevity and convenience, I shall hereinafter refer to this detention order as 'the first detention order.'

On 22 May 1988, the applicant had made representations to the Advisory Board under the provisions of art 151(1)(a) of the Federal Constitution.

The Advisory Board then fixed 20 July 1988 for the hearing of the representations but, in the meanwhile, pursuant to an application for a writ of habeas corpus, filed by the applicant, the High Court sitting in Kuala Lumpur had on 14 July 1988 granted the same and directed his release and he was in fact released on the same day, but the Minister, being dissatisfied with the decision, appealed against it to the Supreme Court.

The applicant's freedom was short-lived for, while the appeal by the Minister was still pending, precisely on 17 September 1988, he was re-arrested pending inquiries under s 3(1) of the Act and on 14 November 1988, he was detained under another detention order made by the Minister pursuant to the powers conferred upon him by s 6(1) of the Act directing his detention for a period of two years commencing from 15 November 1988 at the centre. For brevity and convenience, I shall refer to this detention order as 'the second detention order'.

The applicant then filed a second application for a writ of habeas corpus, this time in the High Court, Penang. Following that, on 30 January 1989 the Supreme Court allowed the appeal from the decision of the High Court, Kuala Lumpur, and set aside the order for the grant of habeas corpus and substituted, in lieu thereof, an order dismissing the applicant's application. In consequence, on 24 February 1989, the Minister revoked the second detention order.

On 14 March 1989, following argument before me in open court, I dismissed the applicant's second application for habeas corpus relying on the decision of the Supreme Court in *Karpal Singh* v *Inspector General of Police*.[1]

On 28 February 1989, pursuant to art 151(1)(b) of the Constitution, the Yang di-Pertuan Agong allowed an extension of time of ten months and nine days commencing from 23 May 1988 within which the Advisory Board had to consider the representations made by the applicant and make their recommendations thereon to the Yang di-Pertuan Agong.

Accordingly, on 21, 22, 23 and 26 March 1989, at the centre, the Advisory Board heard the applicant's representations and, on 27 March 1989, it made its recommendations thereon to the Yang di-Pertuan Agong. In accordance with these recommendations, the Yang di-Pertuan Agong had, pursuant to s 10(2) of the Act, confirmed the first detention order made by the Minister. It was not clear when this was but it must have been after 27 March 1989.

Before me, counsel for the applicant has again sought an order of habeas corpus relying on three separate grounds. First, the applicant, a Malaysian citizen, having suffered continued detention without the Advisory Board having considered representations by him and made their recommendations thereon within three months of receiving such representations, or within such longer period as the Yang di-Pertuan Agong might have allowed, there had been a violation of art 151(1)(b) of the Constitution, with the result that his detention was unauthorized by law. It was argued that the extension of time granted by the Yang di-Pertuan Agong, upon application made after the expiry of the three-month period aforesaid, was ultra vires the powers conferred by art 151(1)(b).

Secondly, there being no communication as to when the Yang di-Pertuan Agong had made his decision giving directions to the Minister authorizing the continued detention of the applicant pursuant to s 10(2) of the Act, it could not be said that the same was made within a reasonable time.

Thirdly, there had been no communication to the applicant of the decision of the Yang di-Pertuan Agong pursuant to s 10(2) of the Act authorizing the continued detention of the Applicant.

At the outset of the hearing, learned federal counsel took the preliminary objection that the application was barred by estoppel, in that it was open to the applicant in the earlier proceedings to have taken the points he now relies upon.

I overruled the preliminary objection as I was satisfied that the factual matrix upon which the applicant relied in support of his application occurred after the termination of the earlier proceedings. Accordingly, the hearing of the application proceeded upon the merits.

As regards the first ground, shortly put, the question of law was whether the Yang di-Pertuan Agong has the power to extend the three-month period limited by art 151(1)(b) upon application made by the Advisory Board to him *after* expiry of such period. If there was no such power, then the decision confirming the first detention order would be ultra vires and the court can correct it notwithstanding s 10(2) of the Act which provides that such decision shall be final and shall not be called into question in any court. (See *Re Tan Boon Liat*.[2])

Article 151(1)(b) provides as follows:

> (1) Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention —
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> ...
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> (b) no citizen shall continue to be detained under that law or ordinance unless an advisory board constituted as mentioned in Clause (2) has considered any representations made by him under paragraph (a) and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such representations, or within

such longer period as the Yang di-Pertuan Agong may allow.

I note, in passing, that s 10(1) of the Act is in pari materia, but mutatis mutandis, with art 151(1)(b). But, as in this case, it was common ground that the Yang di-Pertuan Agong had on 28 February 1989, pursuant to art 151(1)(b), granted an extension of time of ten months and nine days commencing from 23 May 1988 within which the Advisory Board had to consider the representations by the Applicant and make recommendations thereon; I need only have regard to the provisions of the Constitution, so far as this part of the case is concerned.

It is obvious that art 151(1)(b) contains no provision enabling the court to extend time upon application made to it after the expiration of that period. Contrast, for example, O 3 r 5 (2) and (3) of the Rules of the High Court 1980, wherein such power is expressly provided for in respect of periods limited by the Rules of High Court 1980 or by any judgment order or direction. And, there appears to be authority for saying that a court has inherent jurisdiction to extend time in interlocutory proceedings independently of the rule (see *Keymer* v *Reddy*[3]) or the period of time fixed by an interlocutory order of the court for doing some act in some proceeding. In the present case, however, I am not concerned with the extension of a period of time fixed by a rule or order of court.

I might mention in passing that item 8 of the Schedule of the Courts of Judicature Act 1964 is merely declaratory of the jurisdiction of the High Court to enlarge time prescribed by any written law for the doing of any act or taking any proceeding although any application therefore be not made until after the expiration of the time prescribed, always provided there is express provision in the particular law itself which enables such time to be enlarged. (see *Lee Lee Cheng* v *Seow Peng Kwang*.[4])

Clearly, therefore, I am thrown back to considering the particular provisions of the law under consideration, that is to say, the Constitution. Now, art 160(1) of the Constitution provides as follows:

> The Interpretation and General Clauses Ordinance 1948, as in force immediately before Merdeka Day shall, to the extent specified in the Eleventh Schedule, apply for the interpretation of this Constitution as it applies for the interpretation of any written law within the meaning of that Ordinance, but with the substitution of references to the Yang di-Pertuan Agong for references to the High Commissioner.

But, the Eleventh Schedule makes no mention (and thereby excludes) s 39 of the Interpretation and General Clauses Ordinance 1948 which provides:

> Where in any written law a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend such time, unless the contrary intention appears the power may be exercised by the court or other authority although the application for the same is not made until after the expiration of the time prescribed.

It appears, therefore, that the respondents cannot rely on s 39 of the Interpretation and General Clauses Ordinance 1948 to meet the applicant's argument that the Yang di-Pertuan Agong had no power to extend time.

That, however, is not the end of the matter, for I next have to consider ss 45 and 109 of the Interpretation Acts 1948 and 1967 (Rev 1989) ('the Interpretation Acts'), which provide as follows:

> 45. Where in any *written law* a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend that time, the power may be exercised by the court or authority although the application for its exercise is not made until after the expiration of the time prescribed.
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> 109. Where in any *written law* a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend such time, unless the contrary intention appears the power may be exercised by the court or other authority although the application for the same is not made until after the expiration of the time prescribed. (Emphasis supplied.)

By s 3 of the Interpretation Act 1967, 'written law' means, inter alia, the Federal Constitution. It appears to me, therefore, that by virtue of ss 45 and 109 of the Interpretation Acts the Yang di-Pertuan Agong has power to extend time for purposes of art 151(1)(b) even though the application for extension of time is made to him after expiry of the period fixed thereunder. There were, of course, ample grounds for the Yang di-Pertuan Agong to have granted the extension of time in view of the chequered history of the case which I have outlined above. Accordingly, the first ground of objection fails.

As regards the second ground, I agree that a decision of the Yang di-Pertuan Agong under s 10(2) of the Act agreeing with the recommendations of the Advisory Board must be made within a reasonable time but, considering the circumstances of this case, I cannot accept that there has been non-compliance with this requirement.

As regards the third ground, it is true that there had been in this case no communication to the applicant or his solicitors of the decision of the Yang di-Pertuan Agong made pursuant to s 10(2) of the Act, authorizing the continued detention of the applicant. However, I fail to see what prejudice the applicant has suffered as a result. (See *Jayaraman a/l Arumugam* v *Minister of Home Affairs*.[5])

In all the circumstances, the application for habeas corpus was dismissed.

Application dismissed.

Solicitors: *Karpal Singh & Co.*

Reported by *Zarinah Marican*